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In The Supreme Court Of The United States

October Term, [redacted] 1969

No. [redacted] 39

RICHARD HALL AND CHRISTINE HALL,

Appellants

v.

HARRIET BEALS, Clerk and Recorder of El Paso County, and BESS TITUS, Election Supervisor of El Paso County,

Appellees

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

STATEMENT AS TO JURISDICTION

RICHARD HALL and CHRISTINE HALL
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Appellants, appearing personally pursuant to the provisions of 28 U.S.C. Section 1654.

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

STATEMENT AS TO JURISDICTION

The appellants, pursuant to United States Supreme Court Rules 13(2) and 15,

file this statement contending that the Supreme Court of the United States has jurisdiction on direct appeal to review the final decree denying an injunction to appellants in the court below, and that the Court should exercise such jurisdiction in this case.

OPINION BELOW

The District Court below delivered a written opinion on the second day of December, 1968. A copy of this opinion is attached to this jurisdictional statement.

JURISDICTION

The appeal herein is from a final judgment denying appellants an injunction restraining the enforcement of Colorado Revised Statute 49-24-1 (1963). The judgment below was by a three-judge United States District Court for the District of Colorado specially constituted under 28 U.S.C. Sections 2281 and 2284 upon the plaintiffs' application for a permanent injunction to restrain the enforcement, operation or execution of Colorado Revised Statute 49-24-1 (1963) as being repugnant to the "equal protection" and "privileges and immunities" clauses of the Fourteenth Amendment to the Constitution of the United States.

The final judgment appealed from was

originally made in a minute order entered on October 30, 1968, by the District Court for the District of Colorado, and from a memorandum opinion and order handed down on December 2, 1968, by the District Court for the District of Colorado. Notice of appeal was filed in the United States District Court for the District of Colorado on December 13, 1968

The Supreme Court of the United States has jurisdiction to review by direct appeal the judgment complained of by the provisions of 28 U.S.C. Sections 1253 and 2101(b). The following decisions are believed to sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case. Carrington v. Rash, 380 U.S. 89 (1965); Harper v. Virginia Board of Elections, 383 U.S. 663 (1966); Williams v. Rhodes, 37 U.S. Law Week 4,001 (October 15, 1968).

The Colorado statute that is involved is Colorado Revised Statutes 49-24-1 (1963), found in Volume 3, Pages 815-816 of the official edition, which reads as follows:

> "ELIGIBILITY OF NEW RESIDENT TO VOTE. - Any citizen of the United States who shall have attained the age of 21 years, shall have resided in this state not less than six months next preceding the election at which he offers to vote, in the county or city and county not less

than ninety days, and in the precinct not less than fifteen days, and shall have been duly registered as required by the provisions of this article shall have the right to vote as a new resident for presidential and vice-presidential electors."

The District Court held that this statute set forth a reasonable residence requirement and was constitutional under the equal protection clause and privileges and immunities clause of the Fourteenth Amendment to the United States Constitution.

QUESTIONS PRESENTED

The principal questions presented in this case are:

1. Whether the six months residence requirement imposed by the State of Colorado before one is allowed to vote for the office of President and Vice President of the United States is a proper and reasonable requirement that can be imposed by the state before allowing one to participate in the national election, or whether such a residence requirement is an unreasonable restriction placed upon a voter and therefore should be struck down under the "equal protection" clause of the Fourteenth Amendment to the Constitution.

2. Whether the residence requirement imposed by the State of Colorado violates the "privileges and immunities" clause of the Fourteenth Amendment to the Constitution of the United States, in that it inhibits and burdens a citizen's right to travel among the several states and to establish residence in any particular state.

closely scrutinized and carefully confined. Reynolds v. Sims, 377 U.S. 533 (1964); Harper v. Virginia Board of Elections, 383 U.S. 663 (1966). A recent Gallup Poll released on December 11, 1968, states that five million people in the United States were denied the right to vote in the last national election because of state imposed residence requirements. Even if the Gallup Poll was fifty per cent inaccurate, the total of two and a half million people being prevented from voting by state imposed residence requirements would still have been a bloc of voters large enough to swing the election had they been allowed to vote. The 1968 national election was so close and remained in doubt to the eleventh hour of balloting, thus giving fresh and direct importance to the rule that any restrictions which exclude that many voters from voting should be carefully and closely scrutinized to see if, in fact, they are reasonable.

a. The "equal protection" argument.

Unless it can be shown that the residence requirement rests on grounds that are relevant to the achievement of a legitimate state purpose and objective, and that the residence requirement is reasonable in light of its purpose, the requirement may violate the concept of equal protection expressed in the Fourteenth Amendment to the United States Constitution. See McLaughlin v. Florida, 379 U.S. 184, 191 (1964); McGowan v. Maryland, 366 U.S. 420, 425 (1961). The one critical factor which

member of the "community," for the community involved is a national one. The voter will be governed by the same President, no matter what state he lives in, and therefore has a stake in choosing who shall be the President.

Second, the normal rationale stating that a voter is familiar with the candidates and issues is irrelevant in a national election for President, for residence in any particular state does not insure that a voter is any more familiar with the candidates for President and the issues involved in the race for President than the voter in any other state or a voter that travels throughout the states.

Third, the statute, as applied, will not prevent double voting, for Colorado does not notify an old state of the fact that someone has voted in Colorado, and therefore a voter could, if he were willing to take the risk of being caught, apply for an absentee ballot and thus be able to vote in two states. The sanction for perjury is the only sanction preventing such double voting, and the residence requirement by itself does not serve such a purpose; even without a residence requirement, the perjury sanction would still apply.

Finally, it is contended that this Court in Williams v. Rhodes, 37 U.S. Law Week 4,301 (October 15, 1968), has recently stated that a state cannot pass a law regulating elections that violates the Fourteenth Amendment requirement of equal protection, and that states cannot rely too heavily on Art. II, Section 1 in the United States Constitution to justify such voting requirements.

Similar arguments and considerations were presented to the Court in the case of Drueding v. Devlin, 234 F. Supp. 721 (DC Maryland, 1964), affirmed per curiam, 380 U.S. 125 (1965), where this Court upheld a lower court's refusal to grant relief to a similar voter in Maryland. However, it is contended that since the Drueding decision, this Court, in Harper v. Virginia Board of Elections, supra, and in Williams v. Rhodes, supra, has expressed consideration and philosophies that would suggest that the Drueding decision should not necessarily remain a fixed determination of this issue. It is contended that there is a growing awareness in this Court, as well as throughout the land, that the right to vote is an important right of every citizen, and should not be limited except for the most legitimate reasons. The closeness of this last election, coupled with the results of the Gallup Poll showing that over five million people were denied the right to vote due to residence requirements, makes it imperative that this Court give fresh consideration to the issues involved here, and not feel constrained by the decision in Drueding v. Devlin, supra.

B. The "privileges and immunities" argument.

In addition, Drueding v. Devlin did not consider the privileges and immunities argument raised in this case. Numerous cases since the Drueding decision have struck down residence requirements involving

the right of new residents to receive sta welfare benefits. See, e.g., Harrell v. Tobriner, 279 F. Supp. 22 (DC, D.C., 1967 Green v. Department of Public Welfare, 27 F. Supp. 173 (DC Pennsylvania, 1967); Thompson v. Shapiro, 270 F. Supp. 331 (DC Connecticut, 1967); Denny v. Health and Services Board, 285 F. Supp. 526 (DC Wisconsin, 1968); Robertson v. Ott, 284 F. Supp. 735 (DC Massachusetts, 1968); Smith v. Reynolds, 277 F. Supp. 65 (DC Pennsylvania, 1967). These cases are now before this Court, 37 U.S. Law Week 3154 (1968), and should they be affirmed by this Court these cases may have a bearing upon the validity of any residence requirement imposed upon the right to vote.

If the right to vote in a national election for the office of President and Vice President is a "privilege" or "national" citizenship, the privileges and immunities clause should bear upon the issues in this case. The right to vote for congressmen and senators in a national election is clearly a right of national citizenship and is protected by the United States Constitution, United States by Katzenbach v. Original Knights of the Klu Klux Klan, 250 F. Supp. 330 (DC Louisiana, 1965); United States v. Classic, 313 U.S. 299 (1941). It has been suggested that the right to vote for presidential electors is equally a privilege of national citizenship, United States v. Buck, 18 F. Supp. 283 (DC Missouri, 1937) affirmed 93 F.2d 385, certiorari denied, 303 U.S. 644 (1937). This Court

whether the requirement is not unduly restrictive under either the equal protection clause or privileges and immunities clause. It is submitted that all these matters are presented by this case, that the right to vote has been increasingly protected and increasingly affirmed in the course of decisions rendered by this Court recently, and it is submitted that this Court may find this case an appropriate one for reversal of the lower court and for an authoritative and elaborate treatment of the issues presented in this case, rather than simply entering a per curiam decision as was done in the Browding v. Doyle case, supra.

Respectfully submitted,

Richard V. Hall

Christine A. Hall

Appellants, appearing personally pursuant to the provisions of 28 U.S.C. Section 1654.

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Action No. C-1111

RICHARD HALL and CHRISTINE HALL,

Plaintiffs,

v.

HARRIET BEALS, Clerk and Recorder of El Paso County, and BESS FITUS, Election Supervisor of El Paso County,

Defendants.

Messrs. Quigley, Wilder, Belwig & Palermo, Mr. Richard V. Hall, Attorneys at Law, Suite 602 Pikes Peak Building, Colorado Springs, Colorado, for Plaintiffs and Robert L. Russel, District Attorney, by Bernard R. Baker, Deputy District Attorney, El Paso County, Suite 455 Independence Building, Colorado Springs, Colorado, for Defendants, John P. Moore, Deputy Attorney General, State of Colorado.

MEMORANDUM OPINION AND ORDER

DOYLE, Judge.

Plaintiffs, on behalf of themselves

and others similarly situated, seek to enjoin the enforcement, execution and administration of the provisions of Colorado Revised Statutes 1963, § 49-24-1.[1] This prohibits a resident of the State of Colorado from voting in elections for the President and Vice-President of the United States unless such resident has resided within the State of Colorado for a period of "not less than six months next preceding the election at which he offers to vote."[2]

The six months residency requirement for voting for the President and Vice-President of the United States is a specifically enacted exception to the basic requirement of one year's residency for

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1. "Eligibility of new residents to vote. — Any citizen of the United States who shall have attained the age of twenty-one years, shall have resided in this state not less than six months next preceding the election at which he offers to vote, in the county or city and county not less than ninety days, and in the precinct not less than fifteen days, and shall have been duly registered as required by the provisions of this article, shall have the right to vote as a new resident for president and vice-president." (Emphasis added.)

2. Id.

voting in all other elections in Colorado.[3] The plaintiffs seek to vote only for the President and Vice President of the United States and, therefore, only § 49-24-1 of the Colorado Statutes is challenged in this case.

Plaintiffs are over the age of twenty-one years, citizens of the United States, and have been residents of El Paso County, Colorado, since June 15, 1968.[4]

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3. "Basic qualifications---(1)(a) Every person who has attained the age of twenty-one years, possessing the following qualifications, shall be entitled to register to vote at all general, primary, and special elections:

(b) He shall be a citizen of the United States;

(c) He shall have resided in this state one year immediately preceding the election at which he offers to vote, in the county ninety days, and in the precinct fifteen days . . . ." 1963 C.R.S. § 49-3-1.

4. Plaintiffs have purchased a home at 1617 North Corona Street, Colorado Springs, El Paso County. They have registered their car with the Colorado Motor Vehicle Bureau and have obtained Colorado driver's licenses. Plaintiff, Richard Hall, is permanently employed with the law firm of Quigley, Wilder, Helwig & Palermo, Suite 602 Pikes Peak Building, Colorado Springs, Colorado.

Plaintiffs moved to El Paso County from Contra Costa County, California, where they previously resided and had been registered to vote. In an effort to vote in the election for President and Vice-President of the United States on November 5, 1968, plaintiffs applied for absentee ballots from the State of California, but they were advised by the Contra Costa County election officials that they would not be allowed to vote in California because they were no longer residents of the State of California. On or about August 1, 1968, the plaintiff, Richard Hall, went to the office of the County Clerk and Recorder for El Paso County and requested that he and his wife be allowed to vote there in the election for President and Vice-President of the United States. The registration officials informed the plaintiff that he and his wife would not be allowed to register to vote in the November 5, 1968 election, because of failure to satisfy the residence requirements of the State of Colorado.

Plaintiff then wrote to the Secretary of State of California stating that he would not be allowed to vote in Colorado and requesting that he and his wife be allowed to vote in California for President and Vice-President. On August 28, 1968, plaintiff was informed by letter from the Secretary of State of California that he and his wife would not be allowed to vote in California because they were no longer residents. Plaintiff then wrote to the Secretary of State of Colorado

requesting that he and his wife be allowed to vote for President and Vice-President in Colorado despite the six-month residency requirement. On September 6, 1968, plaintiff was informed by the State Election Office that he and his wife would not be allowed to vote in the State of Colorado because they had not resided in Colorado for the required period of time.

The plaintiffs have exhausted their administrative remedies, and this Court has jurisdiction of the controversy, which arises under the Constitution and laws of the United States. 28 U.S.C. § 1343.

Art. II, Sec. 1 of the Constitution of the United States provides that the President and Vice-President of the United States shall be elected by electors chosen from each State, who shall be appointed "in such Manner as the Legislature thereof may direct." The various methods which have been used in the past for "appointing" electors are discussed in McPherson v. Blacker, 146 U.S. 1, 29-32, 13 S. Ct. 3, 36 L.Ed. 869 (1892); for many years all of the States have chosen electors by popular votes.

It has long been settled law that the States have the power to prescribe reasonable and nondiscriminatory qualifications for voting in federal as well as state elections.[5] Therefore, Colorado has the

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5. The right of suffrage is not a privilege and immunity of a citizen of the

unquestioned responsibility and duty to prescribe reasonable and nondiscriminatory qualifications for voting in the election

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5. (continued)

United States, but is a right conferred by the States. Minor v. Happersett, 21 Wall. 162, 177, 22 L.Ed. 627 (1875); Pope v. Williams, 193 U.S. 621, 632-633, 24 S. Ct. 573, 575 (1904). The Supreme Court in Lassiter v. Northampton County Board of Elections, 360 U.S. 45, 79 S. Ct. 985 (1959), stated:

> "The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised, absent of course the discrimination which the Constitution condemns . . . . So while the right of suffrage is established and guaranteed by the Constitution it is subject to the imposition of state standards which are not discriminatory and which do not contravene any restriction that Congress acting pursuant to its constitutional powers, has imposed . . . .
>
> . . . .
>
> We do not suggest that any standards which a State desires to adopt may be required of voters. But there is wide scope for exercise of its jurisdiction. Residence requirements,

for President and Vice-President of the United States. The plaintiffs attempt to draw an analogy between the issue they

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5. (continued)

> age, previous criminal record are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters." 360 U.S. at 50-51, 79 S. Ct. at 989-990. (Emphasis added.) (Citations within quote omitted.)

In Gray v. Sanders, 372 U.S. 382, 83 S. Ct. 801 (1963), the Supreme Court made it clear that the states have the power to prescribe qualifications for voting in federal as well as state elections by its statement that

> "[s]tates can within limits specify the qualifications of voters in both state and federal elections; the Constitution indeed makes voters' qualifications rest on state law even in federal elections. Art. I, §2." 372 U.S. at 379, 83 S. Ct. at 808.

Although the Supreme Court in Carrington v. Rash, 380 U.S. 91, 85 S. Ct. 775, held unconstitutional a provision of the Texas Constitution prohibiting any member of the Armed Forces of the United States who moves his home to Texas during the course of his

present and the issues involved in the congressional redistricting and legislative reapportionment cases, e.g., Reynolds v. Sims, 377 U.S. 533, 561-562, 84 S. Ct. 1362 (1964), and Avery v. Midland County, 390 U.S. 474, 88 S. Ct. 1114 (1968). However, we find, as did the Three-Judge Court in Drueding v. Devlin, 234 F. Supp. 721, 725 (D. Md. 1964), that those cases are not analogous to the issues presented here.[6]

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5. (continued)

military duty from ever voting in any election in that State so long as he or she is a member of the Armed Forces, it recognized the long standing principle that "Texas has unquestioned power to impose reasonable residence restrictions on the availability of the ballot." 380 U.S. at 91, 85 S. Ct. at 777.

See also Drueding v. Devlin, 234 F. Supp. 721 (D. Md. 1964), aff'd per curiam, 380 U.S. 125, 85 S. Ct. 807 (1965); Harper v. Virginia State Board of Elections, 383 U.S. 663, 86 S. Ct. 1079 (1966).

6. The Court in Drueding v. Devlin, supra, stated that

> "it may be noted that the Supreme Court declined to intervene in such cases until it was convinced that there was little hope that the several state legislatures would take remedial action." 234 F. Supp. at 725.

Since the State of Colorado has the authority and the responsibility to prescribe qualifications for voting in the election for President and Vice-President of the United States, the only real issue in this case is whether the Colorado Statute which requires residence in the State for six months before an otherwise qualified voter may vote is so unreasonable as to amount to a prohibited discrimination under the Equal Protection Clause of the Fourteenth Amendment.

The leading case on the reasonableness of state residency requirements is Drueding v. Devlin, 234 F. Supp. 721 (D. Md. 1964), aff'd per curiam, 380 U.S. 125, 85 S. Ct. 807 (1965). In Drueding, a Three-Judge District Court was faced with the same question presented here. The plaintiffs there, as in the present case, were fully qualified except for satisfying the residency requirement. The statute required one year of residence within the state and six months within the county. The plaintiffs had moved to Maryland from Pennsylvania on June 6, 1964 and had sought to vote in the 1964 presidential election. In every sense, the facts in Drueding are parallel to the facts in this case.

The Court in Drueding noted that there are two purposes in such a statutory residency provision:

1. Identifying the voter and protecting against fraud.

2. Insuring that the voter will in fact become a member of the community, and as such have a common interest in all matters pertaining to its government. The fully reasoned opinion by Judge Thomsen expressed the personal opinions of the Judges that the objectives of the statute could probably be attained by a shorter residency requirement, but concluded that the Court was not at liberty to substitute its personal views for those of the legislature in the absence of a showing of unreasonable discrimination. After carefully considering the applicable Supreme Court decisions, the Court concluded that the residency requirements were not so unreasonable as to amount to an irrational discrimination.

The Supreme Court of Colorado has stated that the purposes of residency requirements are:

1. To preserve the purity of elections. Mauff v. People, 52 Colo. 62, 123 P. 101 (1912).

2. To prevent the control of state affairs by persons who have no pecuniary interest in them. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923). While the purpose mentioned in Merrill has no application in this case since the plaintiffs want to vote only in the presidential election, the state's interest in preserving the purity of its elections is very much present. Some time limit must be set for

determining who is and who is not a resident of Colorado for the purposes of voting, not only to preserve the purity of the election, but also for administrative reasons. In line with the personal opinions of the Judges in Drueding that the objectives of residency requirements could probably be attained in a period less than a year, Colorado has chosen to amend its Constitution and pursuant to that amendment the Colorado legislature has provided a time limit of six months for presidential elections. We are not at liberty to substitute our personal views of what time limit would accomplish the objectives of a residency requirement for the judgment of the Colorado legislature in the absence of a showing of unreasonable discrimination.

The Court in Drueding held that a one year residency requirement was not so unreasonable as to amount to an irrational discrimination, and it was affirmed per curiam by the Supreme Court. The Supreme Court in that case had a clear opportunity to accept the contention that lengthy residency requirements are unreasonable and to set forth guidelines as to what time period would be reasonable. This recent indication of the Supreme Court's viewpoint cannot be ignored. Accordingly, we hold that the Drueding decision is positive authority for dismissal of the complaint and for denial of relief.[7] The

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7. The Voting Rights Act of 1965 did not overrule Drueding since it is only applicable

Clerk is therefore ordered to dismiss the complaint and to dismiss the cause of action.[8]

DATED at Denver, Colorado, this 29th day of November, A.D. 1968.

BY THE COURT:

/s/ Delmas C. Hill
DELMAS C. HILL, Circuit Judge
Tenth Circuit Court of Appeals

/s/ Ewing T. Kerr
EWING T. KERR, Chief Judge
United States District Court
District of Wyoming

/s/ William E. Doyle
WILLIAM E. DOYLE, Judge
United States District Court
District of Colorado

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7. (continued)
to invidious state action, such as discrimination based on race, color or creed. There was absolutely no evidence, nor was it even contended, that Colorado's six month residency requirement discriminates against a class of citizens by reason of race, color, creed, or other invidious ground.

8. The members of the Court recognize the unfairness and injustice in depriving the plaintiffs of their vote. However, we are powerless to remedy this since we must follow the law.